Hearing: May 9, 2000

Paper No. 16
TEH

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

Trademark Trial and Appeal Board

_____

In re Daniel A. Teet, M.D., P.C.

_____

Serial No. 75/296,222

_____

Joseph Scafetta, Jr. for Daniel A. Teet, M.D, P.C.

David H. Stine, Trademark Examining Attorney, Law Office 114 (Conrad Wong, Acting Managing Attorney).

_____

Before Cissel, Hohein and Holtzman, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Daniel A. Teet, M.D., P.C. has appealed from the final refusal of the Trademark Examining Attorney to register the mark RENAISSANCE COSMETIC SURGERY CENTER for "providing cosmetic and reconstructive surgery."[1]

[1] Application Serial No. 75/296,222, filed May 4, 1997 alleging first use on January 1, 1997 and first use in commerce on January 17, 1997. The phrase COSMETIC SURGERY CENTER has been disclaimed.

Registration has been refused under Section 2(d) of the Trademark Act on the ground that applicant's mark so resembles the marks shown below, all owned by the same registrant and all for "retirement home and health care services," as to be likely to cause confusion:

Registration No. 1,643,099;[2]

RENAISSANCE

Registration No. 1,703,974;[3]

and Registration No. 1,712,507.[4]

THE RENAISSANCE

[2] Issued April 3, 1991; combined Sections 8 and 15 filed.

[3] Issued July 28, 1992; combined Sections 8 and 15 filed.

[4] Issued September 1, 1992; combined Sections 8 and 15 filed.

When the refusal was made final, applicant appealed. Both applicant and the Examining Attorney filed briefs and an oral hearing was held.

Here, as in any likelihood of confusion analysis, we look to the factors set forth in In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), giving particular attention to the factors most relevant to the case at hand, including the similarity of the marks and the relatedness of the goods or services.

Turning first to the marks, the Examining Attorney argues that the marks create similar commercial impressions, all of the marks being dominated by the term RENAISSANCE. Applicant's sole argument on this issue is that purchasers would not perceive that the marks create similar commercial impressions.

Applicant's and registrant's marks are similar in sound, appearance and commercial impression, the strongest impression of each mark being conveyed primarily by the single word RENAISSANCE. In fact, one of the cited registrations consists solely of the word RENAISSANCE. While marks must be compared in their entireties, there is nothing improper in giving more or less weight to certain features of the marks as being more dominant or otherwise significant, and therefore to give those features greater weight. See In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). In this case, applicant's

disclaimed wording, COSMETIC SURGERY CENTER, while not ignored in the analysis, is highly descriptive of applicant's services and therefore of little significance as an indication of source. See, e.g., Hilson Research Inc. v. Society For Human Resource Management, 27 USPQ2d 1423 (TTAB 1993). In addition, design elements, such as that appearing in one of the cited marks, are generally less important than the word portion of the mark in creating an impression. See In re Appetito Provisions Co., 3 USPQ2d 1553 (TTAB 1987). Here, it is the word RENAISSANCE in applicant's and registrant's marks which is most likely to be remembered and relied upon by purchasers in calling for the respective services.

Moreover, RENAISSANCE appears to be a unique term in the health care field and thus more likely to create confusion when used in both applicant's and registrant's marks. See, e.g., Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992). We have no evidence that RENAISSANCE is commonly used in the health care or related fields, or any other evidence in the record to suggest that RENAISSANCE is weak, or entitled to anything less than a broad scope of protection.

We turn then to the services. The Examining Attorney argues in this regard that applicant's services are a specialty within the general health care field and must be considered, at least in

part, legally identical to the broad unrestricted health care services portion of registrant's identified services.

Applicant maintains that the health care services of registrant "are related" to its retirement homes and not separate therefrom, arguing that applicant does not perform general health care services or run a retirement home and that registrant's retirement home and its "related" health care services are not broad enough to include cosmetic and reconstructive surgery. Applicant contends that registrant's services are offered in "an area completely dissimilar than that of the Applicant," stating that there are no cosmetic and reconstructive surgeons in registrant's retirement facility. It is applicant's position that the elderly residents of a retirement home featuring health care services are not "the same middle-aged consumers" who would seek cosmetic and reconstructive surgery and that an ordinary consumer would not go to a retirement home to have cosmetic surgery and would not go to a cosmetic surgery center "for information about retirement homes." Applicant believes that purchasers of both types of services are sufficiently sophisticated to recognize the difference between the sources of the services.

In response, the Examining Attorney points out that applicant is not permitted to narrow or restrict the scope of the services by claiming, for example, that registrant only provides

health care services which are "related" to its retirement home services when there are no restrictions in the identification of services in the registrations as to channels of trade or classes of purchasers.

Notwithstanding applicant's arguments, we find that applicant's cosmetic and reconstructive services, on the one hand, and registrant's health care services, on the other, are related services which, if provided under similar marks, would result in likelihood of confusion. Applicant's specialized cosmetic and reconstructive surgery must be considered to be encompassed by registrant's broadly described health care services. By its arguments that the services are not related, are not in same channels of trade, and are not directed to the same purchasers, applicant has read impermissible limitations into the registration. Whether registrant in fact offers cosmetic and reconstructive surgery as part of its general health care services is not relevant. Nor does it matter whether or not registrant's health care services are only offered in connection with its retirement home services. As our primary reviewing court has often stated, the question of likelihood of confusion is determined on the basis of the identification of services set forth in the registration, without limitations or restrictions as to the actual nature of the services, their channels of trade and/or classes of purchasers that are not reflected therein. See

J & J Snack Foods Corp. v. McDonalds' Corp., 932 F.2d 1460, 1464, 18 USPQ2d 1889, 1892 (Fed. Cir. 1991); Octocom Systems Inc. v. Houston Computers Services Inc., 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); and CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198 (Fed. Cir. 1983).

In the absence of any specific restrictions in the application or registration as to the channels of trade or classes of purchasers, it must be presumed that applicant's cosmetic and reconstructive surgery is offered in the same channels of trade as registrant's health care services, even at the same medical facilities, and that the services are offered to all potential customers, including registrant's health care customers.

Applicant's claim that the users of these services are sophisticated is unsupported by the record. We can assume that applicant's surgical procedures are costly and that persons who are interested in or in need of this type of surgery may be careful in their selection of a medical facility and the surgeon to perform the surgery. However, there is no evidence that such individuals are sophisticated in these matters, and indeed, the ordinary purchaser of these services would probably not be. Moreover, even if purchasers were established to be sophisticated with respect to the services, we would have no basis upon which

to conclude that such sophistication would extend to the marks used in connection with them.[5]

Contrary to the contention of our dissenting colleague, we are not proposing to "ignore" the term "retirement home" in the registration's identification of services. The fact is that the registrant has listed both retirement home "and" health care services, not "retirement home services and health care services rendered in retirement homes to residents thereof," as applicant and our dissenting colleague would have it. It is simply contrary to accepted rules of grammatical interpretation to construe the plain language in the registration in the distorted way the dissent suggests.

We conclude that purchasers familiar with registrant's health care services provided under its marks including the mark RENAISSANCE, would be likely to believe, upon encountering applicant's RENAISSANCE COSMETIC SURGERY CENTER for cosmetic and reconstructive surgery, that the services originated with or are somehow associated with or sponsored by the same entity.

[5] Finally, applicant has submitted no evidence in support of its claim that there has been no actual confusion and that claim has therefore

Decision: The refusal to register is affirmed.

R. F. Cissel

T. E. Holtzman
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

been given no consideration. In any event, it is unnecessary to show actual confusion in establishing likelihood of confusion.

Hohein, Administrative Trademark Judge, dissenting:

I respectfully dissent since, while I concur with the majority that, for the reasons stated, the marks at issue are sufficiently similar, I disagree that the respective services, as identified, are so closely related that confusion as to their origin or affiliation is likely. In particular, it is worth noting that the majority, like the Examining Attorney, makes no contention that applicant's services of "providing cosmetic and reconstructive surgery" are in any way related to registrant's "retirement home" services. Instead, inasmuch as registrant's services are identified in their entirety as "retirement home and health care services," both the majority and the Examining Attorney focus their attention on the language "health care services" in order to support their conclusion that confusion is likely. In this regard, the majority "find[s] that applicant's cosmetic and reconstructive services, on the one hand, and registrant's health care services, on the other, are related services" because "[a]pplicant's specialized cosmetic and reconstructive surgery must be considered to be encompassed by registrant's broadly described health care services."

It is of course well settled that the issue of likelihood of confusion must be determined on the basis of the goods as they are set forth in the involved application and cited

registrations. See, e.g., CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); Squirtco v. Tomy Corp., 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983); and Paula Payne Products Co. v. Johnson Publishing Co., Inc., 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973). Moreover, where the goods and/or services in the application at issue and those in the cited registrations are broadly described as to their nature and type, it is presumed in each instance that in scope the application and registrations encompass not only all goods and/or services of the nature and type described therein, but that the identified goods and/or services move in all channels of trade which would be normal therefor and that they would be purchased by all potential buyers thereof. See, e.g., In re Elbaum, 211 USPQ 639, 640 (TTAB 1981). These principles, however, should not be rigidly or otherwise indiscriminately applied, especially when the result is plainly at odds with the real world, with which trademark law is designed to deal.

In the present case, I disagree that it is a reasonable construction of the identification of services in each of the cited registrations to interpret such services as broadly encompassing any and all kinds of "health care services," including, as offered by applicant, the "providing of cosmetic and reconstructive surgery." Registrant's services are not identified, for example, as "retirement home services and health

care services" or even as "retirement homes and health care services."[1] Rather, registrant's services are set forth in their entirety as "retirement home and health care services," an identification which, I find, must fairly be read as restricting such services to the very limited and most basic "health care services" which would customarily be provided by a "retirement home." Such "health care services," given the age and condition of the typical residents of retirement homes, would not generally include applicant's "cosmetic and reconstructive surgery" services, which if needed would be performed in a hospital or clinical setting, any more than retirement home health care services would necessarily include, for example, either open heart surgical procedures or *in vitro* fertilization techniques. Yet, under the view of the majority and the Examining Attorney, the cited registrant must be presumed to be providing all manner of health care services, including any kind of surgery, in addition to rendering retirement home services.

Stated otherwise, I simply do not share the slavish position of the majority that "the fact is that the registrant has listed both retirement home and health care services". The cited registrations should not be treated so broadly. Rather, as

[1] At the oral hearing the Examining Attorney insisted, when asked, that "health care services," despite the vast array of medical, surgical and other health related services covered thereby, was not considered to be too vague or indefinite and thus would be an acceptable identification of services.

indicated above, a reasonable reading of the language set forth in registrant's recitation of services, and one which is clearly neither "distorted" nor contrary to any (notably unspecified) "acceptable rules of grammatical interpretation," is to construe the identification of registrant's services to be necessarily limited to those encompassing the most elementary "health care services" which a "retirement home" facility would typically provide its residents. Such services in fact would not and do not include the providing, as applicant does, of cosmetic and reconstructive surgery.

In summary, I concur with applicant that the words "retirement home" cannot be ignored in the identification of registrant's services and that, when properly considered in context, the "health care services" included in registrant's services must be read as implicitly being restricted to the kinds of general patient care which meet only the most basic medical and hygienic needs of a retirement home resident. Registrant's services should not be interpreted so expansively as to include any types of surgical procedures, including applicant's cosmetic and reconstructive surgery services.

Accordingly, in the absence of any showing or persuasive argument that, as identified, the respective services are identical in part and/or otherwise closely related in a

meaningful commercial sense, I would reverse the refusal to register.

G. D. Hohein
Administrative Trademark Judge,
Trademark Trial and Appeal Board